



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1703 (1940)

December 22, 1987

SUBJECT: Protection for Purchasers of Farm Products

TO: All State Directors, State Directors-at-Large,
Farmer Programs Chiefs, District Directors and
County Supervisors, FmHA

Purpose/Intended Outcome:

This Administrative Notice (AN) is issued to provide guidance and instruction on field implementation of changes to the security requirements for farm products as created by Section 1324 of the Food Security Act of 1985 (Public Law 99-198). This section of the law, entitled "Protection for Purchasers of Farm Products," went into effect December 23, 1986.

Comparison with Previous AN:

This replaces AN No. 1508 (1940) which expired on November 30, 1987.

Implementation Responsibilities:

Under law the Packers and Stockyards Administration (PSA) certifies the creation of individual state "Central Filing Systems" (CFS), which use a system of financing statements to show a creditor's secured interest in a farm product. Farm products, for the purposes of Section 1324 of Public Law 99-198, include crops, animals, and animal products, but not equipment. In those States where a CFS has been adopted and PSA certified, the CFS takes precedence over the previously existing State financing statement system, usually the Uniform Commercial Code (UCC), in perfecting security interests in farm products against buyers in the ordinary course of business, commission merchants and selling agents. A creditor must file under both the UCC (or other applicable State law) and the CFS to fully perfect a security interest in farm products in those States with a CFS, and under just the UCC for equipment. In those States opting not to have a CFS certified, State laws (usually the UCC) will establish the financing statement system; however,

EXPIRATION DATE: December 31, 1988

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1940-G



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creditors are required to give a purchaser of the farm product prior written notification of the lien, if such creditor wishes to pursue collection through the purchaser. If a creditor does not participate in the CFS in a State with a certified CFS, or does not give prior notification in a non-CFS State, the purchaser takes the farm product free of the creditor's lien, and third party accountability to the creditor is terminated.

Continuing the policy established under AN No. 1508 (1940), the Farmers Home Administration (FmHA) has decided that it will not file security instruments under the CFS system in those States where adopted, and will not meet the burden of the prior notification of purchasers requirement that is in effect in all other areas. Security filings under the previously existing systems (UCC or other applicable State law) will be continued.

Emphasis should be placed on borrower accountability for security, as required by FmHA Instructions 1924-B and 1962-A, and the utilization of Form FmHA 1962-1, to establish FmHA security and preempt conversion events.

This policy impacts on FmHA Instruction as follows:

1. FmHA Instruction 1924-B, Section 1924.57(b): In order to establish effective control over conversions, Form FmHA 1962-1 must be completed in all applicable cases, in accordance with the Forms Manual Insert (FMI) and other National/State Office Instructions.
2. FmHA Instructions 1962-A, Sections 1962.5, 1962.6 and 1962.9; 1941-B, Sections 1941.57, 1941.60 and 1941.63; 1941-A, Section 1941.19; and 1945-A, Section 1945.169: Require that the County Supervisor adequately secure loans under State law. These requirements will be continued; however, security instruments will not be filed under a CFS system. Lien searches will be extended to the CFS system; however, if a CFS is certified for that individual State, and the respective State Office will issue State instructions accordingly.
3. FmHA Instruction 1962-A, Section 1962.13: Requires the County Office to send out lists of borrowers to business firms in a trade area, if the firms request such information, and allows dissemination of the lists without solicitation. This Instruction will not be altered; however, these lists are for information purposes only, and will not be intended or used as a substitute to meet the prior notification of purchasers requirement in non-CFS certified states.

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4. FmHA Instruction 1962-A, Section 1962.49: Actions against third party purchasers of farm products, which include crops, livestock and livestock products, will not be pursued when a valid claim cannot be established because of noncompliance with CFS or prior notification requirements. An opinion from the Office of the General Counsel (OGC) will be solicited, in accordance with FmHA Instruction 1962-A, Section 1962.49(b)(3)(iii), which covers this issue on a blanket, rather than case-by-case basis. If an unapproved disposition of farm products security has occurred, and the County Supervisor has proceeded to the point of FmHA Instruction 1962-A, Section 1962.18(a)(2), prior to third party demand and/or civil action, the circumstances of the event will be transmitted to the State Office to review the validity of the claim. The State Office will make a determination whether the facts in the particular case support a claim and resulting action.

5. FmHA Instruction 1980-B, Sections 1980.108(a), 1980.109(b) and 1980.130: Lenders holding or requesting FmHA loan guarantees will be expected to secure the collateral and service the security within what is "customary" for their respective non-guaranteed portfolios. The guaranteed lender is held to a reasonable, prudent lender standard. Lenders should be told that FmHA will not be implementing any CFS requirements, but that it is up to each lender to decide what the reasonable, prudent lender in the area would do.

When an individual state enacts legislation to create a CFS system, which is subsequently certified by the PSA, it is anticipated that the CFS system could be incorporated into the UCC, such that one financing statement is used. In these cases the State Director should review the legislation with the Regional OGC and request authority from the National Office to participate in the respective CFS system. Those State Offices that have already received authority to participate in a CFS do not need to submit a new request.

Questions on the above procedures and other matters relating to the implementation of the "Protection for Purchasers of Farm Products" may be communicated through/by State Offices to the National Office, Assistant Administrator, Farmer Programs on FTS/Comm. (202) 475-5431.



VANCE L. CLARK
Administrator

Sent by electronic mail on Dec 23 at 4:46 pm by ASD. The State Director will advise District and County Offices.